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FILED
DISTRICT COURT OF GUAM

JUL 26 2005

MARY L.M. MORAN
CLERK OF COURT

51

U.S. DISTRICT COURT OF GUAM

UNITED STATES OF AMERICA,

CRIMINAL CASE NO. 05-00039

Plaintiff,

MOTION TO RECONSIDER
DETENTION; MEMORANDUM OF
LAW; DECLARATION OF COUNSEL;
CERTIFICATE OF SERVICE

vs.

GERARDO ELOY GONZALEZ, JR., JOHN
TIMOTHY PERALTA, DEANNA INGRID
MORALES a/k/a DEANNA MORALES
GUERRERO, SEAN MICHAEL COLE
a/k/a SHAWN COLE, GILBERT JOSE
MATTA, JESSICA ROSE MESA, LISA
MARIE RODRIGUEZ a/k/a LISA
RODRIGUEZ-COLE, AND ANNETTE
JOYCE GONZALEZ a/k/a ANNETTE
ROMERO

Defendants. /

TO: Plaintiff UNITED STATES OF AMERICA, by and through its attorney of
record, MARIVIC P. DAVID, Assistant U.S. Attorney

MOTION TO RECONSIDER DETENTION

COMES NOW Defendant GILBERT JOSE MATTA ("MATTA"), through
counsel, MAHER • YANZA • FLYNN • TIMBLIN, LLP, by Louie J. Yanza, and hereby
moves this Honorable Court to reconsider releasing him on bail, with specific
conditions as outlined below:

1. That Defendant MATTA be released on \$50,000.00 personal recognizance bond or, in the alternative;
2. That Defendant MATTA be subject to electronic monitoring and drug testing and, if required by Pretrial Services, and/or any other conditions that this Court finds reasonable;
3. That Defendant MATTTA reside with his girlfriend and co-defendant, JESSICA ROSE MESA, at 111 Chalan Balako, Dededo, Guam 96929,.

This motion is based upon the notice, memorandum of law and documents and records on file herein.

Dated this 26th day of July, 2005.

MAHER • YANZA • FLYNN • TIMBLIN, LLP
Attorneys for Defendant
GILBERT JOSE MATTA

By: 

LOUIE J. YANZA

MEMORANDUM OF LAW

Title 18 U.S.C. §3142, governs release of persons awaiting trial and permit courts to release those persons unless the judicial officer finds that the person is likely to flee or pose a danger to the safety of any other person or the community. Defendant MATTA asserts that there is a clear and convincing evidence that he is not a flight risk or that he does not pose a danger to the community.

1 Defendant MATTA is not a flight risk. He considers Guam his home. His
2 girlfriend, Defendant MESA, resides here on Guam. When released, Defendant
3 MATTA will reside with his girlfriend at 111 Chalan Balako, Dededo, Guam 96929.

4 Defendant MATTA also asserts he is not a danger to the community. Title 18
5 U.S.C. §§3142 and 3143 do not provide a bright-line answer to what constitutes "danger"
6 to the community. However, Congress did not declare that the community is entitled to
7 assurances of freedom from all harm and a court cannot detain a defendant on the mere
8 apprehension of danger of harm. Rather, the court's inquiry must focus on whether by
9 conditions of release the community can reasonably be assured of safety. In this case,
10 the Court can feel secure the community is not at risk should Defendant MATTA be
11 released. Conditions of release can certainly be fashioned that will ensure the protection
12 of the community.

13 This Court has many options rather than pre-sentencing incarceration. It can
14 order daily appearances before pretrial services, electronic monitoring or other forms of
15 curfew, full-time employment, third-party custody, drug testing, bail, and/or a property
16 bond. In the instant case, this Court can also order a bond secured by Defendant
17 MATTA in his girlfriend's home.

18 Moreover, there are many sanctions available to the Court should Defendant
19 MATTA fail to comply with the terms and conditions of his supervised release. Under 18
20 U.S.C. §3146, Defendant MATTA can be given a prison sentence apart from a
21 consecutive to the sentence Defendant MATTA may receive if he is convicted of the
22 underlying offense.

23 In addition, under 18 U.S.C. §3147, if the defendant commits a crime while on
24 release, he will receive a sentence **consecutive** to the underlying offense. Section
25

1 3147is designed to deter those who would pose a risk to community safety by committing
2 another crime when released and also to punish those who indeed are convicted of
3 another offense.

4 Hence, this Court has at its disposal two highly effective statutes designed to
5 deter persons from failure to appear and from committing offenses while on release.
6 Defendant MATTA is fully aware of these sanctions, and respectfully submits this Court
7 will not have to use them if Defendant MATTA is released on appropriate conditions.

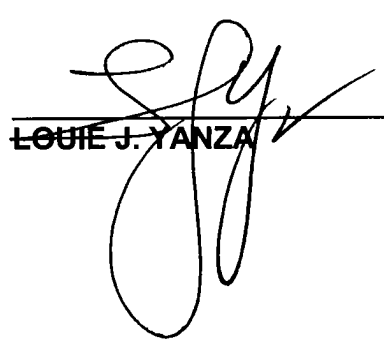
8
9 **CONCLUSION**

10 Defendant MATTA asserts that he is not a flight risk or danger to the
11 community and respectfully requests that this Court release him upon terms and
12 conditions this Court deems appropriate.

13 Respectfully submitted this 26th day of July, 2005.

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15 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**
16 **Attorneys for Defendant**
17 **GILBERT JOSE MATTA**

18 By:

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LOUIE J. YANZA

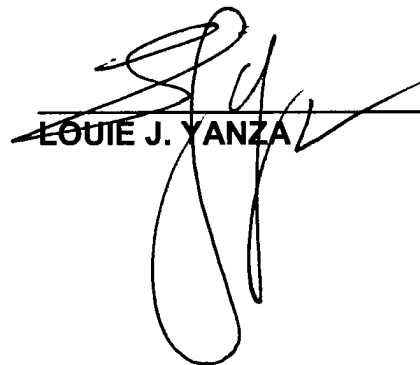
DECLARATION OF COUNSEL

I, LOUIE J. YANZA, hereby declare and state as follows:

1. I am appointed counsel for Defendant GILBERT JOSE MATTA, having been appointed pursuant to the Criminal Justice Act.
2. That the facts and statements set forth in the foregoing document are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed in Hagatña, Guam, this 26th day of July, 2005.


LOUIE J. YANZA

CERTIFICATE OF SERVICE

I, Louie J. Yanza, hereby certify that on or before July 26, 2005, I caused to be sent by personal service or by facsimile a copy of the annexed **Notice of Motion; Motion to Reconsider Detention; Memorandum of Law; Declaration of Counsel; Certificate of Service**, to the following parties at their place of business:

Ms. Marivic P. David
Assistant U.S. Attorney
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Hagatña, Guam 96910
Counsel for the United States of America

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Counsel for Defendant Deanna Ingrid Morales a/k/a Deanna Morales Guerrero

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1 **NOTICE OF MOTION; MOTION TO RECONSIDER DETENTION; MEMORANDUM**
2 **OF LAW; DECLARATION OF COUNSEL; CERTIFICATE OF SERVICE**
3 **United States of America v. Gerardo Eloy Gonzalez, et al.**
4 **U.S. District Court of Guam, Criminal Case No. 05-00039**

5 **G. Patrick Civile, Esq.**
6 **CIVILLE & TANG, PLLC**
7 Suite 200, 330 Hernan Cortez Avenue
8 Hagatña, Guam 96910
9 **Counsel for Defendant Lisa Marie**
10 **Rodriguez a/k/a Lisa Rodriguez-Cole**

11 Dated this 26th day of July, 2005.

12 **MAHER • YANZA • FLYNN • TIMBLIN, LLP**
13 **Attorneys for Defendant**
14 **GILBERT JOSE MATTA**

15 By:

16 
17 **LOUIE J. YANZA**